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ABSTRACT

This policy brief reports on an analysis of the legislation establishing charter schools in the 19 states that had such legislation as of December 1995. It identifies provisions in the state legislation which specify anti-discrimination policies and clauses, the inclusion of students at risk or students with disabilities, fiscal provisions, personnel requirements, and transportation needs. It identifies three issues for policymakers to consider when reviewing or adopting charter school legislation: (1) whether the rights of students with disabilities are protected under the charter school legislation; (2) whether the charter school legislation has the "effect" of discriminating against students with disabilities; and (3) whether the programmatic needs of students with disabilities are adequately considered. The policy brief distinguishes between strong charter legislation which provides the greatest autonomy for the charter school and weak legislation which limits the schools' flexibility and retains greater authority in the local school boards. It concludes that states with strong charter legislation (such as Arizona, California, Colorado, Delaware, and Texas) are more likely to have legislation which addresses the needs of students with disabilities in their legislation than states with weak charter school legislation (such as Alaska, Arkansas, and Georgia). A chart compares the legislation in the 19 states with reference to students with special needs. (DB)

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The Treatment of Special Education in Charter School Legislation

As of August 1996, 25 states and the District of Columbia had approved charter school legislation. While charter schools must comply with civil rights and laws, such as the *Individuals with Disabilities Education Act*, the *Vocational Rehabilitation Act*, and the *Americans with Disabilities Act*, a number of issues regarding the inclusion of students with disabilities in charter schools have surfaced.

A recent study of charter schools in Minnesota, which is a pioneer in charter school development, found that one of the major challenges faced by existing charter schools is how to provide special education (Urahn & Stewart, 1994). In particular, the study identified two problems: charter schools were unfamiliar with the special education funding process and they were unprepared to provide the assessments and services needed. Similar issues have been raised in other charter school studies (Finn, Bierlein & Manno, 1996; U.S. Government Accounting Office, 1995).

To determine how state charter school laws are addressing the education of students with disabilities, legislation from the 19 states that had charter school legislation as of December 1995 was reviewed. Provisions in the state legislation which specify anti-discrimination policies, and those which refer to students at risk, students with disabilities, students with special needs or similar language acknowledging a special class of students were identified. Figure 1 on the back page presents a summary of the legislation.

- **General Anti-discrimination Clauses:** All but six states have a general anti-discrimination clause in their legislation which forbids discrimination by a charter school on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, or need for special education resources.

- **Inclusion of Students with Disabilities:** Some charter schools are created to provide specialized curriculum, or to serve a specialized population (i.e., academically gifted and talented students). The degree to which students with disabilities are included in charter schools may be impacted by efforts to set the specific academic admission requirements.

Eight states specifically forbid charter schools to discriminate on the basis of specific student abilities, but only one state specifically cites the need to include students with disabilities in a charter school. Eight states also promote inclusion of students at-risk of educational failure or who are academically low-achieving.

While state charter school legislation varies considerably with respect to how specifically it addresses the inclusion of special needs students, statutory language pertaining to special education most often relates to how special education services will be funded, rather than promoting or ensuring the inclusion of students with disabilities.

- **Fiscal Provisions:** The problems of funding are compounded in many states by unclear relationships between the local districts and the charter schools. For instance, in states with "strong," or highly autonomous charter school legislation, the charter schools may themselves be considered as legal Local Education Agencies (LEAs) and be responsible for meeting the federal special education requirements, including paying the "up-front costs for identifying students for services. Where charter schools are not considered as legal independent local education agencies, the school district (of residence) may be primarily responsible for meeting these costs.

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Legislation in 12 states address how special education programs are to be funded in the charter schools. Colorado law clarifies that the disproportionate share of state and federal resources generated by students with disabilities or staff serving them shall be directed to charter schools enrolling such students by their school districts or administrative units. Hawaii provides that the allocation of state monies for self-contained special education and for other special education students shall be adjusted appropriately to reflect the additional expenses incurred for students in these programs. Legislation in both California and Louisiana provide that for each pupil enrolled in a charter school who is entitled to special education services, the state and federal special education funds for that pupil – which would normally flow to the district – should be provided directly to the charter school attended by that student.

- **Waivers:** An important provision in all charter legislation pertains to waivers of state education code. All charter schools are permitted to obtain some waivers, most typically those regulating class size, instructional time, and curriculum. However, the language regarding waivers is not clear. For example, most states have broad statements permitting waiver of any state regulation. Yet many of these states also have strong statements regarding adherence to all federal and state regulations concerning special populations such as students with disabilities.

- **Personnel:** Many states with charter school legislation allow for waiver of general education personnel certification requirements. However, consistent with the "qualified personnel provisions" in the IDEA, many states have not provided for waivers of certification for special education personnel working in charter schools. Delaware's legislation specifically references special education personnel through its provision that allows charter schools to develop a qualified alternative certification program for teachers available in all disciplines except special education.

- **Transportation:** Three states address the transportation needs for students with special needs. Both Colorado and Illinois require charter school proposals to include a description of the school plans to meet the transportation needs of its pupils including low-income and academically low-achieving pupils. Delaware charter schools must ensure that the transportation needs of all students living in the school district where the charter school is located be met.

Issues for Policymakers to Consider When Reviewing or Adopting Charter School Legislation

- **Are the rights of students with disabilities protected under the charter school legislation?** Does the legislation specifically forbid discrimination against students with disabilities or does the legislation contain a general anti-discriminating clause? Are general anti-discrimination clauses such as those in Arizona, California and Colorado sufficient to ensure that students with disabilities are not excluded from participation in charter schools? Alternatively, is the degree of autonomy of charter schools so weak that local district policies ensuring the rights of students with disabilities access to all school programs sufficient?

- **Does the charter school legislation have the *effect* of discriminating against students with disabilities?** Do provisions in the legislation aimed at promoting or requiring the development of charter schools for students "at-risk" include students with disabilities as part of that population? Alternatively, do such provisions promote the development of special education schools where *all* of the students in the school are in special education with no opportunity to be educated with "typical" students?

- **Are the programmatic needs of students with disabilities adequately considered in charter school legislation?** Does the legislation allow for the transfer of special education funding to the charter school to support students in special education? Related, does the funding mechanism provide adequate resources for the proper testing and identification of students with disabilities in charter schools who may not have been previously identified for special education? Are the transportation needs of students with disabilities considered in the legislation or promulgating rules?

Conclusion

From the perspective of charter schools, strong charter legislation provides the greatest autonomy for the charter school. Conversely, weak charter legislation maintains the strongest ties with the host local districts. Strong legislation allows charter schools significant autonomy by permitting the creation of a high or unlimited number of schools and allowing the school full control over all state, federal and local funds generated by their student count. In contrast, states with weaker charter school legislation limit the schools' flexibility by allowing only existing public schools to be chartered and by giving the local school boards significant latitude in approving and overseeing charters (Bierlein and Mulholland, 1995).

In general, it appears that states with strong charter legislation are more likely to address students with disabilities in their legislation than those states that have weaker charter school legislation. Arizona, a state with strong charter autonomy, contains a general anti-discrimination clause. California legislation, also considered to be strong, has both an anti-discrimination clause and promotes the inclusion of at-risk students. Other strong charter states, such as CO, DE, and TX, specifically address the need to include special education students or require a specific number of schools for at-risk students. Conversely, states with the weaker charter laws, including AK, AR, GA and NM, make no reference to special needs students or have an anti-discrimination clause. This may be because states with weaker charter school laws assume that close ties to host school districts will ensure adequate provisions for students with disabilities.

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This Policy Update is based on research conducted by the Center for Policy Research on the Impact of General and Special Education Reform, a partnership of NASBE, the Institute for the Study of Exceptional Children at the University of Maryland, and the Consortium for Policy Research in Education at the University of Pennsylvania. For more information contact: Dr. Margaret J. McLaughlin, Institute for the Study of Exceptional Children and Youth, College of Education, University of Maryland at College Park, 1220 Benjamin Building, College Park, MD 20742-1161.

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Figure 1:

State Charter School Legislation Reference to Students with Special Needs*

	AZ	AK	AR	CA	CO	DE	GA	HI	KS	LA	MA	MI	MN	NH	NM	RI	TX	WI	WY
General Anti-Discrimination clause	X			X	X	X				X	X	X	X	X		X	X	X	X
Specifically forbids discrimination on the basis of IQ, academic performance, athletic ability, or other ability						X					X	X					X		X
Promotes the inclusion of students identified as at-risk or academically low-achieving				X	X	X			X	X						X			X
Requires a certain number of charter schools to include students identified as at-risk or academically low-achieving					X														
Addresses need to include students with disabilities or students in special education																X			
Addresses funding issues for special education programs				X	X	X		X		X	X	X	X	X		X			
Addresses transportation issues for students with special needs					X	X													
Addresses alternate teacher certification issues for special education						X													

* Includes states that passed charter school legislation prior to January 1, 1996.

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